IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : November 01, 2006

1. Criminal Appeal No. 557-DBA of 1999

State of Haryana versus Siri Kishan and others

2. Criminal Appeal No. 366-SB of 1999

Siri Kishan and others versus State of Haryana

3. Criminal Revision No. 788 of 1999

Gulam Rasul versus Siri Kishan and others

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present: **In Criminal Appeal No. 557-DBA of 1999**
Mr. Siddharth Batra, AAG,Haryana
assisted by Mr.R.S.Rai, Advocate, for the complainant

Mr.D.S.Bali,Senior Advocate with
Mr.D.V.Gupta and Mr. Ram Avtar Yadav,Advocates
for the respondents.

In Criminal Appeal No. 366-SB of 1999

Mr.D.S.Bali,Senior Advocate with
Mr.D.V.Gupta and Mr. Ram Avtar Yadav,Advocates
for the appellants

Mr. Siddharth Batra, AAG,Haryana assisted by
Mr.R.S.Rai, Advocate

In Criminal Revision No. 788 of 1999

Mr. R.S.Rai, Advocate, for the petitioner

Mr.D.S.Bali,Senior Advocate with
Mr.D.V.Gupta and Mr. Ram Avtar Yadav,Advocates
for the respondents

Virender Singh, J.

Vide this judgment, we are disposing of the aforesaid two appeals and Criminal Revision as all the three cases are arising out of one and the same judgment dated 5.4.1999 passed by learned Additional Sessions Judge, Gurgaon, vide which all the 11 appellants (To be referred to as 'Accused') have been convicted under Sections 148, 302 Part-II read with Section 149 IPC, 325 read with 149 IPC, 324 read with 149 IPC and 323 read with 149 IPC. The sentence awarded to each of the accused is reproduced as under:-

Name of Convict	***Conviction recorded under Section***	***Sentence awarded***	***Amount of fine imposed***	***Sentence awarded in default of payment of fine***
1. Dalip Singh	304 Part II IPC	Five years RI	Rs.700/-	Four months RI
2. Mir Singh	read with 149 IPC	each		
3. Parshadi	325 IPC read with 149 IPC	Three years RI each	Rs.300/- each	Two months RI
	324 IPC read with 149 IPC	Two years RI each	--	--
	323 IPC read with 149 IPC	Six months RI each	--	--
	148 IPC	Two years RI each	--	--
1. Siri Krishan	304 Part II IPC	Seven years RI:	Rs.1000/-	Six months RI
2. Samey Singh	read with 149 IPC	each		
3. Dharam Singh	325 IPC read with 149 IPC	Three years RI each	Rs.300/- each	Two months RI
4. Hari Singh	324 IPC read with 149 IPC	Two years RI each	--	--
5.Indraj alias Inderpal	323 IPC read with 149 IPC	Six months RI each	--	--
6. Kanwar Singh	148 IPC	Two years RI each	--	--
7. Sohrab				
8. Mamman				

However, all the sentences are ordered to run concurrently.

Aggrieved by the impugned judgment of conviction and sentence, all the 11 accused have preferred Criminal Appeal No.366-SB of 1999.

State of Haryana also being dissatisfied with the acquittal of all the accused for the main charge of Section 302 read with Section 149 IPC has filed its separate appeal No.557-DBA of 1999. Complainant Gulam Rasool has also filed his separate Revision Petition No. 788 of 1999 praying for conviction of all the accused under Sections 302/149 IPC and for grant of compensation also. The said revision was ordered to be heard with Criminal Appeal No.366-SB of 1999. However, no formal order of admission was passed.

The instant case was registered on the basis of statement Ex.PA of Gulam Rasool complainant. His real brother Habib is the deceased in this case who according to the allegations on 1.8.1988 had gone to the school building in the village for filing nomination papers for election of Sarpanch. Complainant Gulam Rasool was accompanying him. Habib was to contest the election of Sarpanch. At about 11 A.M. when they came out from the gate of the said school building, accused Samey Singh and Dharam Singh armed with Pharsa each and remaining accused were present there having lathies in their hands. When complainant and Habib came out of the school, Samey Singh accused gave a lalkara saying that they should be killed in

village parlance, it is stated,'Inhe Maar Lo'. Thereafter, Samey Singh accused gave Pharsa blow on the head of Gulam Rasool and Siri Kishan gave a lathi blow on the head of Habib. Sohrab accused also gave a lathi blow on the back of Gulam Rasool touching his neck. Mamman accused also gave a lathi blow on his back. It is then alleged that when Jan Mohammad son of Sultan, Suleman and another Jan Mohammad son of Shakurmal reached there on hearing the noise and tried to intervene in order to rescue the complainant party, accused Indraj and Kanwar Singh gave lathies blows to Habib who was already lying down. The blow inflicted by Kanwar Singh hit the waist of Habib whereas lathi blow given by Indraj accused had hit on his back. Dharam Singh, Dalip Singh, Indraj and Kanwar Singh accused had hit Jan Mohammad son of Shakurmal on right side of head, right forearm, right hand, right shoulder and the right arm. Jan Mohammad son of Sultan, Gulam Rasool, his brother Habib, Jan Mohammad son of Shakurmal and Shakurmal had sustained injuries in this occurrence and they were removed to hospital. A ruqa was sent to the Police Station Tauru,from where Om Parkash, SI, SHO (PW11) reached the hospital and recorded statement Ex.PA of Gulam Rasool, on the basis of which formal FIR Ex.PA/2 was recorded. Gulam Rasool and Habib were referred to General Hospital, Gurgaon and from there to Safdarjang Hospital, New Delhi where Habib succumbed to the injuries on 2.8.1988.

Initially, the case was registered under Sections 148, 149, 324, 323, 506 IPC and after the death of Habib section 302 IPC was added.

During the investigation, the accused were arrested on different dates and weapons of offence were recovered from them, which were taken into possession.

After the completion of the investigation, all the accused were challaned.

It is worth mentioning here that since Siri Kishan accused was serving in Indian Army, the proceeding were initiated against him after obtaining sanction from the concerned Commanding Officer. This was the reason that a supplementary challan was filed qua him and ultimately all the accused were tried together. Charge under Sections 148, 302, 323, 325, 324 and 323 read with Section 149 IPC were framed against all the 11 accused.

The prosecution in order to substantiate its case has examined Gulam Rasool, complainant as PW1 who had given the detailed description of the entire occurrence as already narrated by him in his initial statement Ex.PA.

PW2 is Suleman son of Jayudin the other injured witness. He has also corroborated the testimony of Gulam Rasool on all material aspects describing the specific role of each of the accused.

PW3 is Mul Chand Punia Draftsman had prepared the scaled

plan Ex.PB of the place of occurrence. PW4 is Ram Chander who while posted as Sub Inspector in Police Station City Gurgaon had moved an application on 2.8.1988 for obtaining the medical opinion on Habib injured with respect to his fitness to make statement.

PW5 is Dr.S.P.Singh posted in General Hospital, Gurgaon who on 1.8.1988 had medico legally examined Habib and found the following injuries on his person:-

> "1. Fresh lacerated wound over the anterior aspect of scalp size 1 inch x 1/4th inch into muscle deep, obliquely placed -x-ray was advised.
>
> 2. Quadrangle red bruise over the right side of middle of back of chest size of quadrangle 1-1/2 inch each.
>
> 3. Quadrangle red bruise over the back of the chest 1 inch middle to injury No.2. Size 1-1/2 inch each."

According to his opinion, injury No.2 and 3 were simple and injury No.1 was kept for radiological examination.

He had also examined Suleman, injured on the same day and found the following injuries on his person:-

> "1. Fresh lacerated wound over the middle of the scalp size 1-1/4 x 1/4th inch into bone deep x-ray was advised.
>
> 2. Fresh lacerated wound over the dorso middle aspect of left

forearm. Lower 1/3rd part swelling and tenderness was present. Size of wound was 1/4th inch in diameter. X-ray was advised."

This witness had also examined Gulam Rasool on the same day and noticed the following injuries:

"1.Fresh incised wound over the anterior aspect of middle of scalp. Size 1-1/4 inch x 1/4th inch into bone deep, obliquely placed. X-ray was advised.

2.Red bruise over the posterior aspect neck size 1-1/2 inch x ½ inch. Obliquely placed.

3.Red bruise over the middle of the back size 2 inch x ½ inch obliquely placed."

Jan Mohammad son of Sultan injured was also examined by him on the same day and the following injuries were noticed:-

"1.Fresh incised wound over the right parietal region. Size 1-1/2 inch x 1/4th inch into bone deep, obliquely placed. X-ray was advised.

2.Red bruise over the upper part of right shoulder. Size 1 inch in diamater."

Jan Mohammad son of Shakur Mal when examined by this witness was having the following injuries on his person:-

"1. Fresh lacerated wound over the right occipital eminence. Size ¾ inch into 1/4th inch into skin deep. Obliquely placed.

2. Red bruise over the dorso lateral aspect right forearm. Lower 1/3rd part. Size 1 inch in diameter. Swelling and tenderness was present. X-ray was advised.

3. Fresh abrasion mark over the dorsal aspect. Distal phalanx right middle finger, swelling and tenderness was present. X-ray was advised,

4. Red bruise over the flexed or aspect right arm lower 1/3rd part. Size 1-1/2 inch x 1 inch. Obliquely placed.

5. Red bruise over the upper part of right shoulder size 1-1/2 inch obliquely placed."

This witness has proved the Medico Legal Reports of the aforesaid injured persons. According to the opinion, which is based on Radiological examination, injury No.3 on the person of Jan Mohammad son of Shakurmal was grievous. Similarly, injury No.2 on the person of Suleman was also declared as grievous. This witness has also proved the police application vide which he had opined that all the injured except Habib were fit to make statement.

Cross examination of this witness reveals that on 3.8.1988, he had examined Parshadi Lal accused under the Court orders and found the

following injuries on his person:-

> "1.Blue bruise with swelling and tenderness, over the dorsal aspect of left fore-arm, lower third part of size 1-1/2 inch diameter. X-ray was advised.
>
> 2. Blue bruise over the lateral aspect, right shoulder of size 2 inch in diameter."

Dr.B.B.Aggarwal, PW6 had radiologically examined Jan Mohammad son of Shakur Mal, Suleman son of Fajrudin injured and found the fracture qua one injury each on the person of both of them which have turned out to be grievous in nature as described in the preceding para.

HC Raj Singh is PW7 who on receipt of ruqa from Rural Dispensary, Tauru recorded the report Ex.PM in the daily diary register. He also proved the formal FIR.

SI Som Dev, PW8 had partly investigated the present case and interrogated Siri Kishan accused. Pursuant to his disclosure statement, he had got recovered a lathi. SI Rajinder Singh PW9 who was posted as ASI Police Station Viney Nagar, New Delhi on 1.8.1988 stated that he was on duty in Police Post Safdarjang Hospital New Delhi. After admission of Habib in the said hospital, he twice moved application for obtaining the opinion of the doctor about the fitness of the injured . However, the doctor opined him to be unfit to make statement.Ultimately, on 2.8.1988, after

receipt of the ruqa about the death of Habib, he made entry in daily diary register of the concerned police station. He had also recorded the statement of Rehman and Ismail who were looking after aged Habib.

Dr.S.K.,Verma, PW10 had conducted autopsy on the dead body of Habib and found the following injuries on his person-

"Ante mortem injuries.

1. Head shaved off shows a contused lacerated wound irregular in shape over left parietal region. 1 cm to the left of midline and 12.5 cms posterior to the root of nose of size 3 x 1x0.2 cm.

2. Linear bruise over lower left aspect of back of size 1x 0.2 cm present. 4 cm to the left of mid line and 11 cm above left posterior superior iliac spine.

3.Abrasion of size 1.8 x 0.8 cm irregular in shape present over body of sternum in midline 11 cms below the sternum notch."

The cause of death according to the doctor was coma as a result of extensive ante mortem head injury produced by blunt force impact. This witness had proved the post mortem report and all the diagrams were depicted therein. Inspector Om Parkash PW 11 is the Investigating Officer of this case and the investigation conducted by him has already been narrated by us in the preceding paras.

Certain witnesses were given up as unnecessary by prosecution.

The plea taken up by the accused as emerged from their statement recorded under Section 313 Cr.P.C. is of false implication. However, Parshadi Lal pleaded that a large crowd had collected at the spot at the time of occurrence and many persons out of the crowd had started throwing stones on the complainant party, as a result of which they had received injuries. He further pleaded that the accused side has been falsely implicated on account of party faction in the village.

In defence, the accused had examined one Store Keeper of Civil Hospital,Gurgaon(Kul Bhushan Yadav) who had proved the original MLR of Parshadi Lal. Sheodan Singh Inspector was produced as DW2 who stated that on 3.8.1988, he had gone to the General Hospital, Gurgaon and recorded the statement Ex.DE of Parshadi Lal and sent the same to Police Station Tauru after making his endorsement Ex. DE/1. Pardeep Kumar Single, Pharmacist of Civil Hospital ,Nuh DW3 had brought the MLR Register. Ram Kishan DW4, Reader of Additional Chief Judicial Magistrate, Gurgaon had proved the initials of Shri R.P.Bajaj, the then Additional Chief Judicial Magistrate, Gurgaon on application Ex. DX and endorsement made on it (Ex. DX/1). However, he stated that the original application was not traceable in the record room.

DW5 was again a formal witness of records. Joginder Singh Clerk DW6 had produced a file titled- State Versus Shakura and stated that

one Dalip Sarpanch resident of village Padheni was produced as PW13 in the said case and Jagni Numberdar and Nabi Khan, Member Panchayat and Suleman Secretary Panchayat was produced as DW1 to DW3 respectively.

Dr. Lokesh Kumar of Dhaliwal Nursing Home, private practitioner DW7 had medico legally examined Samey Singh son of Parshadi Lal on 5.8.1988 and found the following two injuries:-

1. An already dressed wound with three stitches 5 cm in length in healing phase in the occipital region. 5 cm above and 2 cm posterior to mastoid process on right side.

2. A contusion of bluish black colour on the middle aspect of right knee. about 6x4 cm in size.

On the same day, he had medically examined Hari Singh son of Parshadi Lal who was feeling pain on the right shoulder region. Abrasion was also seen on the top of his shoulder.

After appreciating the entire evidence, the learned trial Court has convicted and sentenced all the accused as stated herein above.

I have heard Mr. D.S.Bali, learned Senior Advocate assisted by Mr. D.V. Gupta, Advocate and Mr. Ram Kumar Yadav, appearing for all the accused in Criminal Appeal No. 366-SB of 1999 and Mr. Siddharth Batra learned State counsel assisted by Mr. RS Rai, Advocate in State Appeal. Mr. Rai also represents the complainant in Criminal Revision. With their

assistance we have also gone through the records minutely.

Mr. Batra while arguing the State appeal submits that the approach adopted by the learned trial court in holding all the accused guilty under section 304 Part-II read with section 149 IPC instead of main offence of section 302 IPC for which they were charged, is not correct as the prosecution evidence has not been appreciated in the right perspective. Dwelling upon his arguments, Mr. Batra submits that the common object of the unlawful assembly formed by the accused party was to prevent deceased Habib from contesting the Panchayat elections and that is the reason that they were standing in front of the school gate armed with deadly weapons waiting for the complainant party to come out as Habib along with his supporters had gone to submit his nomination paper. According to the State counsel, it was a pre-planned and pre-meditated attack on Habib and others and accused Siri Krishan chose the vital part of the body of the deceased. Habib ultimately died on account of the said injury.

According to Mr. Batra, the injury inflicted on the head of the deceased Habib was sufficient to cause death in the ordinary course of nature and Siri Krishan had intended to cause that injury and therefore, the learned trial court should have convicted him at least for the charge of section 302 IPC substantively and other accused could be convicted for the said charge with the aid of section 149 IPC. Therefore, their conviction

under section 304 Part-II read with section 149 IPC deserves to be disturbed and instead they may be convicted for the charge of section 302 IPC.

Mr. Rai adopts the arguments of Mr. Batra, learned State counsel.

Mr. Bali, Senior Advocate while defending all the respondents in the State appeal submits that even section 304 Part-II read with section 149 IPC is not attracted in the present case as the learned trial court has over looked certain material aspects of the case. Strengthening his arguments, Mr. Bali submits that there was no motive for the appellants to attack the complainant party. Rather it was in the bosom of the complainant party to attack the appellants. This fact has been not taken into consideration by the learned trial court. The learned counsel submits that Indraj had not filed his nomination papers at the time of alleged occurrence and therefore, the finding of the learned trial court that Indraj had already filed the nomination paper and the incident took place when they were coming back is not correct.

Mr. Bali further submits that the ocular testimony stands falsified by the medical evidence. In the present occurrence Parshadi Lal accused received two injuries. So was the position of Samey Singh accused. Hari Singh accused had also received one injury. One of the injuries on the person of Parshad Lal was grievous in nature. Non-

explanation of the injuries on the person of accused by the prosecution renders its case doubtful and therefore, the story put forth by the accused side gets support. According to Mr. Bali, prosecution has tried to suppress the genesis of the occurrence and therefore, neither section 148 IPC is attracted in this case nor the accused can be convicted with vicarious liability with the aid of section 149 IPC. Therefore, their conviction as recorded by the learned trial court may be under section 304 Part-II IPC read with section 149 IPC is not sustainable.

According to Mr. Bali at the most, the present case can be said to be of a free fight in which all the accused can be fastened with their individual liability keeping in consideration the specific role/part attributed to them. On this aspect, Mr. Bali has taken us through the medical evidence once again indicating as to what role is attributed to each of the accused qua the injured from the complainant party including Habib deceased.

On the basis of the aforesaid submissions, Mr. Bali submits that not only the State appeal deserves to be dismissed having no merit in it, even the conviction recorded by the trial court qua all the accused deserves to be set aside or in the alternative the same may be altered according to the part attributed to each of the accused while segregating it and holding that the present case does not fall within the mischief of section 148 IPC or section 149 IPC.

Mr. Rai while arguing the criminal revision petition submits that although the revision petition does not stand admitted, yet while disposing of the instant case, compensation can be awarded to the complainant party. Mr. Rai submits that provisions of section 357 of the Code of Criminal Procedure can be invoked by the Court suo-motu.

The medical evidence indicates that from the side of the complainant which includes Habib deceased also, five persons have received as many as 15 injuries. The main injury on the head of the deceased Habib has been attributed to Siri Kishan accused. Gulam Rasul, Jan Mohammad son of Sultan and another Jan Mohammad have also received one injury each on the head. Injury on the head of Gulam Rasul is an incised wound caused by a Farsa. Jan Mohammad son of Sultan has also received an incised wound on his head. However, the other Jan Mohammad had received lacerated wound on the head. The other injuries on the person of all the injured are in the shape of bruises which have been caused by lathies. On the other hand Parshadi Lal accused has also received two injuries including one grievous injury which is fracture of shaft of left ulna as stated by Dr. B.B.Aggarwal, PW5. Samey Singh and Hari Singh had received simple injuries.

We do not feel the necessity of narrating the prosecution case once again as the same has been alluded to in the preceding paras of the

judgment. What is to be appreciated by us while rescanning the entire prosecution case is as to whether un-lawful assembly was formed in the present case or not, if so then as to whether un-lawful assembly had a common object viz to commit the murder of Habib or they had just assembled at a particular point armed with Farsa and lathies in order to cause injuries to the complainant side including Habib (since deceased) who had gone for filing nomination papers for contesting Panchayat elections.

After recapitulating the entire scenario before us in the light of evidence on record especially the medical evidence, we are of the considered view that all the accused had assembled in front of the school by forming an unlawful assembly to dissuade Habib since deceased his brother Gulam Rasul and their supporter from contesting the elections in which some of the members of unlawful assembly were also armed with different weapons like Farsas and lathies. They all were present at the gate of the school.

We, however, do not agree with the contentions of Mr. Bali that the prosecution has not explained the injuries on the person of some of the accused and the complainant party is suppressing the genesis of the fight. Therefore, the complainant party can be said to be aggressor in this case. As stated above, accused Samey Singh and Hari Singh had received two simple injuries whereas one injury on the person of Parshadi accused had

resulted into a fracture shaft of left ulna. These injuries are not serious in nature and are otherwise possible during the scuffle. Therefore, non explanation of injuries on the persons of three accused would not be fatal to the prosecution so as to throw it in its entirety. On the other hand, from the complainant side, five persons have received as many as 15 injuries and certain injuries are on the vital parts also.

The question as to whether the prosecution is obliged to explain injuries sustained by the accused in the same occurrence and whether failure of the prosecution to so explain would mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence was referred to by a three Judge Bench of Hon'ble Apex Court in **Ram Sunder Yadav Vs. State of Bihar, 1998 (4) RCR (Criminal) 54** in which Their Lordships while referring to the other judgments of the Hon'ble Supreme Court rendered in **Jagdish vs. State of Rajasthan, (1979) 2 Supreme Court Cases 178** and **Hari Krishna Singh and others vs. State of Bihar, (1988) 2 Supreme Court Cases 95** wherein divergent views were expressed, observed that in other two judgments of three Judge Bench rendered in **Bhaba Nanda Sarma and others vs. State of Assam, (1974) 4 Supreme Court Cases 396** and **Vijayee Singh and others v. State of U.P., (1990) 3 Supreme Court Cases 190,** the questions are already answered holding that the prosecution is not obliged to explain the injuries on the

person of the accused in all cases and in all circumstances. Their Lordships in **R.S. Yadav's case (supra)** observed in para 3 as under:-

> " 3. It has now been brought to our notice that earlier a three judge Bench of this Court had considered the above questions in **Bhaba Nanda Sarma and others v. State of Assam, (1974) 4 SCC 396** and held that the prosecution is not obliged to explain the injuries on the person of accused in all cases and in all circumstances and, according to the learned Judges, it is not the law. The same question again came up for consideration before another three judge Bench of this Court in **Vijayee Singh and others v. State of U.P., (1990) 3 SCC 190** wherein it has been held as under:-
>
> > "In Mohar Rai case, 1968 (3) SCR 525, it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh case, 1976 (4) SCC 394 also it is observed that any non-explanation of

> the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."

From the aforesaid settled legal position it can be said that non explanation of injuries can assume importance as per the facts of each case and where the defence gives a version which competes on probability with that of prosecution, it may affect the case of the prosecution. But where the evidence is clear, cogent and the court can distinguish the truth from the falsehood, the mere fact that the injuries are not explained by the prosecution cannot by itself be a basis to reject the whole of the case of the prosecution. The present case is of that type.

As a sequel to the aforesaid discussion, we are of the considered view that all the accused had formed an unlawful assembly armed with weapons which were likely to cause death and therefore, their conviction under section 148 IPC is absolutely justified.

Once we have considered the prosecution case from the point of forming un-lawful assembly observing that force was used by them in this occurrence, the next vital question crops up for our consideration is as to whether there was common object of forming un-lawful assembly viz to commit murder of Habib so as to hold them guilty under section 302 IPC with the aid of section 149 IPC.

According to the medical evidence, Habib deceased has received one lacerated wound on the scalp which is attributed to Siri Kishan accused who was armed with a lathi. Except that there is no other injury on the vital part of his body. The cause of death was as a result of coma on account of extensive ante mortem head injury produced by blunt force impact. Taking advantage of one injury on the person of Habib deceased which proved to be fatal and attributed to Siri Kishan accused, Mr. Bali submitted that his case be segregated from rest of the accused on the rationale that it was a free fight in which both the sides had received injuries. As we have already held that all the accused are liable to be convicted under section 148 IPC as common assembly was formed in this

case, therefore, case of Siri Kishan accused alone for the main injury on the person of Habib cannot be segregated.

We have appreciated the case of the prosecution yet from another angle as to whether on the proved facts, case of Siri Kishan accused can be segregated individually qua the charge of section 302 IPC substantively and for the other charges he can be convicted with the aid of section 149 IPC along with his co-accused, so as to hold rest of the accused (10 accused) liable for the offences punishable under sections 325, 324 and 323 IPC read with section 149 IPC. However, from the totality of facts and circumstances before us, we are of the view that the aforesaid approach would not be in the right perspective especially when there is no dearth of injuries received by the complainant side.

A subtle line of distinction has to be drawn between the intention and the knowledge. Knowledge may be presumed from intent but intent cannot be inferred from knowledge. Each case has to be seen on its own facts. There cannot be any hard and fast rule to say that a single blow on a vital part would not fall within the definition of Section 300 and it should always fall within the ambit of Section 304 Part-I or 304 Part-II. Indian Penal Code recognizes three degrees of culpable homicide; the gravest form is defined as murder, the second may be termed as culpable homicide of second degree falling within the mischief of Section 304 Part-I

and culpable homicide of third degree would fall within the ambit of Section 304 Part-II. Their Lordships of Hon'ble Apex Court in a very recent judgment rendered in **Rajpal and others vs. State of Haryana 2006 (3) RCC 209,** have observed that in the scheme of IPC 'culpable homicide' is the genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. It is further observed that the safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of sections 299 and 300. It is also observed that the comparative table in appreciating the points of distinction between the two offences is not cast-iron imperatives as some times the facts are so intertwined that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages. Their Lordships observed that distinction drawn was in the shape of broad guidelines only.

We after taking into account the totality of evidence and other features, especially the manner in which the present occurrence had taken place and while following the ratio of aforesaid judgment of the Hon'ble Apex Court, are of the considered view that the approach adopted by the learned trial court while holding all the accused guilty under section 304 Part-II IPC read with section 149 IPC instead of the charge under section 302 IPC read with section 149 IPC is justified. Accordingly, we confirm

their conviction as already recorded. Similarly the conviction for the remaining three charges is also up-held.

We have also considered the case of the accused with regard to the sentence part and are of the view that none of the accused deserve any leniency in this regard. Consequently, the substantive sentence on all the counts is also affirmed.

We, however, do not intend to impose any compensation in this case and, therefore, do not interfere in the criminal revision filed by the complainant.

The net result now surfaces is that Appeal filed by State of Haryana bearing Criminal Appeal 557-DBA of 1999, Criminal Appeal No. 366-SB of 1999 filed by the accused and Criminal Revision No. 788 of 1999 filed by the complainant are dismissed.

It is stated that accused are on bail as their substantive sentences were suspended during the pendency of the instant appeal. They shall now be taken into custody for serving the remainder of their substantive sentence.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

November 01, 2006
'dalbir'

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